Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 2006

JOSEPH J. MIEDZIANOWSKI
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

On Petition for Writ of Certiorari Appeal to The United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Elliott T. Price
Counsel of Record
555 Skokie Blvd.
Suite 500
Northbrook, IL 60062
847-564-1954
Counsel for Petitioner

QUESTIONS PRESENTED FOR REVIEW

I. Whether the District Court erred in allowing the instruction as to an Illinois extortion statute which does not exist to be the predicate to a federal crime.

II. Whether the appellate court correctly interpreted the district court's position on limited remand pursuant to *U.S. v. Paladino* wherein the district court failed to address the presumption of reasonableness when imposing a guideline sentence and the reasons therefore.

III. Whether the appellate court erred in upholding defendant's guideline sentence of life as being reasonable in view of the fact that it's finding was based upon a premise upon which there is an intra-circuit conflict

PARTIES INVOLVED

The parties to the proceedings below were Joseph J. Miedzianowski, Defendant-Appellant in case numbers consolidated under No. 02-2871, 02-3238, 02-4193, 03-1270, 03-1446 Juan Miranda, co-defendant, Lissett Rivera, co-defendant, Omar Feliciano, co-defendant, Alina Lis, co-defendant, and United States Attorney General, Plaintiff-Appellee.

The parties to this petition are Petitioner, Joseph J. Miedzianowski, and the Respondent, the United States Attorney General.

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IN THE
SUPREME COU[illegible]OF THE UNITED STATES

JOSEPH J. MIEDZIANOWSKI, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO The United States Court of Appeals for the Seventh Circuit

Petitioner, Joseph J. Miedzianowski respectfully requests that a writ of certiorari issue to review the judgment and order of the United States District Court of Appeals of the Seventh Circuit entered on February 23, 2006, affirming petitioner sentence for life plus five years for the crimes of racketeering, robbery, money laundering, bribery, kidnapping, extortion, gun violation and conspiracy to possesses with intent to deliver.

OPINIONS BELOW

The order of the United States Court of Appeals for the Seventh Circuit was not published pursuant to rule 53. The order is reprinted in Appendix A, attached hereto and incorporated herewith.

The memorandum order of the Northern District of Illinois on limited remand was is reprinted in Appendix B, attached hereto and

incorporated herewith.

The final order of the United States Court of Appeals for the Seventh Circuit was not published pursuant to rule 53. The order is reprinted in Appendix C, attached hereto and incorporated herewith and was entered on February 23, 2006.

JURISDICTION

The final judgment of the Seventh Circuit court of Appeals in, *United States v.* Miedzianowski was entered in an order filed on February 23, 2006 affirming Defendants sentence after a limited remand to revisit the length of the sentence the court earlier affirmed defendants conviction and sentence by an order entered on February 23, 2006.

The jurisdiction of this Court to review the judgment of the Appellate Court is invoked under 28 U.S.C. Section 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, exeept in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On December 15, 1998, Defendants Joseph Jerome Miedzianowski, Joseph DeLeon, Alina Lis, Yolanda Navarro, Mohammed S. Omar, Rolando Otero, Nelson Padilla, Marvel L. Passley, Frederick G. Rock, and David Ruiz were arrested on charges of conspiracy to possess with intent to distribute cocaine; in violation of 21 U.S.C. §846. The government ultimately filed six superseding indictments against the defendants.

Count one of the sixth superseding indictment charges that, from about 1985 until in or about 1998, Defendants Miedzianowski, Omar and Galligan, charged the defendant and several co-conspirators with racketeering in violation of 18 U.S.C. § 1962(c), 21 U.S.C. §§846 and 841(a)(1); robbery and extortion, in violation of 18 U.S.C. § 1951; money laundering, in violation of 18 U.S.C. § 1956; and, robbery, kidnapping, extortion and bribery, in violation of the Illinois statutes. It was part of the conspiracy that the defendants obtained controlled substances, property, and money from drug dealers through robbery, extortion, kidnapping and deception; fraudulently obtained and falsified official documentation; dealt in controlled substances; failed to enforce the law against conspirators, associates and individuals who aided and assisted them; provided conspirators and associates with confidential information about law

enforcement activity; corruptly interfered with the investigation and prosecution of conspirators and their associates, and; unlawfully obtained from drug dealers money and property, which was provided by the dealers in the belief that the conspirators had the ability to affect the outcome of criminal cases against them and their associates. All this was in violation of 18 U.S.C. §1962(d). The remaining counts charged the various predicate acts alleged in the racketeering counts individually against Miedzianowski and others.

The government built its case against defendant-appellant Miedzianowski using testimony of alleged co-conspirators and audio tapes. The first to testify was Juan Martir allegedly third-in-command of the Imperial Gangsters street gang. At the time of trial he was serving time for drug violations. Facing 30 years to life he received 180 months as a result of his plea bargain. When not in prison he made his living selling cocaine. He testified he purchased cocaine in Miami and shipped it to Chicago using various carriers. He identified defendants Alina Lis Lissett Rivera and Nelson Padilla as couriers . Mohamed Omar, Jr, was another dealer he used. He stated that when arrest in 1998, he was involved in narcotics trafficking with defendant-appellant - Miedzianowski involving kilo quantities of cocaine and Miedzianowski also provided protection to his organization by alerting him to people that were cooperating against them.

During the course of the trial various co -